



**Barasa v Nyogesa (Civil Appeal E083 of 2022)  
[2024] KEHC 4091 (KLR) (25 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4091 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL APPEAL E083 OF 2022  
SC CHIRCHIR, J  
APRIL 25, 2024**

**BETWEEN**

**ASBORN SIKUKU BARASA ..... APPELLANT**

**AND**

**LEONARD N. NYOGESA ..... RESPONDENT**

*(Being an Appeal from the Judgment of Hon. Sylvia Wayodi (RM) delivered on 21.11.2022 on SCCC No. E037 of 2022 at the Small Claims Court at Kakamega)*

**JUDGMENT**

1. The Appellant filed suit at the small claims court in Kakamega seeking for damages for personal injuries resulting from road traffic accident which took place on 3<sup>rd</sup> of June 2021, along Navakholo-Mulava Road.
2. The accident was as a result of a collision between the appellant's motorcycle registration No. KMFH 988Z and the respondent's motor vehicle registration No KPK xxxx.
3. The trial court heard the parties and at the conclusion, delivered judgment in which the respondent herein was held fully liable for the accident and the appellant awarded Ksh 20,000 in general damages. The court declined to award special damages on grounds that the same was not pleaded.

**The Appeal**

4. The appellant was aggrieved by the judgment and filed this appeal setting out the following grounds:
  - a). That the learned trial magistrate erred both in law and fact in finding that the appellant was not entitled to special damages pleaded and specifically proven.
  - b). That the learned magistrate erred in awarding general damages which was too low considering the injuries suffered and the capacity of the Appellant.



- c). That the learned magistrate grossly misdirected herself in treating the evidence and submissions on quantum before her superficially and consequently coming to a wrong conclusion on the same.
  - d). That the learned Trial Magistrate misdirected herself in ignoring the principals applicable and the relevant authorities on the appropriate quantum awardable.
  - e). That the learned Trial Magistrate proceeded on wrong principles (if any) when accessing the damages to be awarded to the Respondent and failed to apply precedents and tenets of law applicable.
  - f). That the learned Trial Magistrate erred in awarding a sum on respect of damages which was so low in the circumstances that it represented an entirely erroneous estimate.
  - g). That the learned Trial Magistrate failed to apply judicially and to adequately evaluate the evidence and exhibits tendered and thereby arrived at a decision unsustainable in law.
5. The court directed the appeal to proceed by way of written submissions.

### **Appellant's Submission**

6. It is the appellant's Submission that the award of Kenyan shillings 20,000 is too low in view of the injuries sustained; that the trial court ignored the appellant's Submission and the authorities sided.
7. It is further submitted that the court ignored conventional awards in general damages for similar injuries and finally she failed to consider the passage of time and inflationary trends.
8. The appellant further contends that the court did not provide a basis for the award of Ksh 20,000. In the appellant's view an award of Ksh 300,000 would have been a fair compensation.
9. In this regard he has relied on the following cases:
  - a). *Purity Wambui vs Highbands Mineral Water Co. Ltd* (2015) eKLR
  - b). *G4s Security Services Ltd vs Mokuo Ochoi* (2018) eKLR 9. On special damages, the appellant argues that he is entitled to Ksh 11,550 being the aggregate of fees for medical report, P3 form and demand notice. Finally the appellant prays for costs of this appeal.

### **Respondent's submission**

10. It is the respondent's submission the award of ksh. 20,000 was adequate; that the injuries listed on the statement of claim were exaggerated. It is further submitted that the award on general damages normally ranges between 20,000 to Ksh 200,000. To buttress his submission's, the respondent has relied on the case of: *Teresia Njoki vs Elizabeth Wanjiru* (2010) eKLR
11. In urging the court to confirm the award of Ksh 20,000, he has relied on the following cases:
  - a). *JMW Vs Joseph Nganga Kungu & Ano* (2013) eKLR
  - b). *Martha Waitibera vs Anestar secondary school* (2020) eKLR
  - c). *NKM vs Jasper Nchonga* (2010) eKLR



## Determination

12. This appeal is against quantum of damages only. The principles upon which an Appellate court can interfere with the discretion of the trial court in assessment of damages is well settled. In the case of *Kemfro Africa Ltd & Ano vs Lubia & Ano*, (1982-1988) 1 KAR 777 cited by the respondent the appellate court can only intervene if the trial court took into account an irrelevant factor, left to a relevant one or the award is inordinately too low or too high that it must be a wholly erroneous estimate of the injuries suffered.
13. What are the injuries in this case? According to Dr. Sokobe, whose report was apparently admitted without calling the maker, the appellant sustained bruises and blunt injuries to both knees.
14. The respondent submitted that the injuries pleaded were exaggerated. I have compared the injuries in the statement of claim and the medical report and don't find any difference.
15. Thus, the injuries sustained therefore were bruises and blunt injuries on both knees.
16. Can the award be said to be too low for the said injuries? In assessing damages, the guiding principles are that similar injuries should attract comparable awards.
17. I have looked at the authorities cited by both parties. The one cited by the appellant's constitute more serious and extensive injuries compared to the present case. whereas the authorities cited by the respondent compares well with the current case, they do not take into account factors of inflation since the said decisions were made. And this is a factor that the trial court also failed to take into account. For this reason, this court has a reason to interfere with the award.
18. Consequently, I hereby set aside the award of Ksh 20,000 and substitute it with Ksh 30,000. In this regard I have taken into account, which injuries are comparable to the present case and considered the inflationary trends since the said decisions were made.
19. On special damages the appellant pleaded the same under paragraph 3 of the statement of claim. The finding of the trial court to the effect that special damages were not pleaded, is therefore erroneous. The claimant pleaded special damages as follows:
  - a). Medical report and P3 form- Ksh 6000
  - b). Search certificate for motor vehicle – Ksh 550
  - c). Demand notice Ksh 5000Total= 11,550
20. I have seen a receipt for Ksh. 5000 shillings dated 15<sup>th</sup> of November 2021 and an invoice from National transport and safety Authority for Ksh. 550. I have not seen any receipt for Ksh 5000 allegedly for account of demand letter.
21. The Trite law on special damages is that it must be pleaded specifically and strictly proved. The amount of Ksh. 5000 though specifically pleaded, has not been strictly proved and therefore the Appellant is not entitled to it.
22. Consequently, I award the appellant Ksh 6,550 only on special damages.
23. In the end I make the following orders:
  - a. The lower court award of Ksh 20,000 is hereby set aside and substituted with an award of Ksh 30,000.



- b. The appellant is awarded special damages of Ksh. 6,500.
- c. The appellant is awarded costs of this Appeal.
- d. The award shall attract interest at court rates from the date of the judgment at the lower court.
- e. There shall be a stay of Execution for 30 days.

**DATED, SIGNED AND DELIVERED AT NAIROBI VIA MICROSOFT TEAMS THIS 25<sup>TH</sup> DAY OF APRIL 2024.**

**S. CHIRCHIR**

**JUDGE**

In the presence of:

Godwin - Court Assistant

Mr. Mirembe for the Respondent.

